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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR 5812-N-01]

HUD's Qualified Mortgage Rule: Announcement of Intention to Adopt Changes Pertaining to Exempted Transaction List

AGENCY: Office of the Assistant Secretary for Housing – Federal Housing Commissioner, HUD.

ACTION: Announcement of change to HUD's exempted transaction definition.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing a final rule being published concurrently with this document, and it can be found elsewhere in this Federal Register, entitled “Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)”, amending certain terms in CFPB’s definition of “qualified mortgage” which HUD cross-referenced in HUD’s qualified mortgage definition. In accordance with the procedures incorporated in HUD’s definition of “qualified mortgage,” this document advises of HUD’s intention to adopt, for HUD’s qualified mortgage rule, CFPB’s changes to the exemption for non-profit transactions from the qualified mortgage standards. HUD is not, however, adopting the new points and fees cure provision adopted by CFPB for the reasons stated in this document, but is providing guidance to mortgagees on curing points and fees errors prior to insurance endorsement.

DATES: Effective Date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Michael P. Nixon, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9278, Washington,

DC 20410; telephone number 202-402-5216, ext. 3094 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

On December 11, 2013, at 78 FR 75215, HUD published a final rule that established a definition of “qualified mortgage” for single family residential mortgages that HUD insures, guarantees, or administers. Under HUD’s qualified mortgage rule, qualified mortgage status attaches at origination and insurance endorsement to those single family residential mortgages insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), section 184 loans for Indian housing under the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a) (Section 184 guaranteed loans), and section 184A loans for Native Hawaiian housing under the Housing and Community Development Act of 1992 (1715z-13b) (Section 184A guaranteed loans). HUD’s definition of “qualified mortgage” is codified for each program at 24 CFR 201.7, 203.19, 1005.120 and 1007.80.

HUD defined “qualified mortgage” in a manner that aligned HUD’s definition, to the extent feasible and consistent with HUD’s mission, with that of the qualified mortgage definition promulgated by the CFPB, and which is codified at 12 CFR 1026.43. HUD undertook the alignment for the purpose of lessening future differences in standards for HUD’s single family residential insured mortgages and those established by the CFPB, which apply to conventional mortgages seeking designation as qualified mortgage.

HUD’s alignment to CFPB’s standards also included cross-references to CFPB’s list of transactions exempted from the qualified mortgage definition, including a non-profit transaction

exemption, and CFPB's limit on points and fees for qualified mortgage status as of January 10, 2014. HUD's definition of qualified mortgage provides that when CFPB amends its definition of qualified mortgage, HUD may announce the adoption of CFPB change or changes through publication of a notice and after providing FHA-approved mortgagees with time, as may be determined necessary, to implement. Members of the public interested in more detail about HUD's qualified mortgage regulations may refer to the preamble of HUD's September 30, 2013, proposed rule and HUD's December 11, 2013, final rule, at 78 FR 59890, 78 FR 75215.

II. HUD Notice of CFPB's Final Rule

Published elsewhere in this Federal Register is CFPB's final rule amending the non-profit transaction exemption from the ability-to-repay rule and providing a limited cure mechanism for the points and fees limit that applies to qualified mortgages.

A. Amendment to the Non-Profit Transaction Exemption

CFPB's final rule amended the "exempted transaction" list to provide that certain interest-free, contingent subordinate liens originated by non-profit creditors would not be counted towards the credit extension limit of 200 transactions that qualifies a nonprofit for the nonprofit exemption at 12 CFR 1026.43(a)(3)(v)(D). Specifically, the rule excludes consumer credit transactions if the transaction is secured by a subordinate lien; for the purpose of down payment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies; for property rehabilitation assistance; for energy efficiency assistance; or for the purpose of foreclosure avoidance or prevention. Additionally, the consumer credit contract must not require payment of interest; must provide that repayment of the amount of the credit extended is forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions; and the total of costs payable by the consumer in

connection with the transaction at consummation is less than 1 percent of the amount of credit extended and includes no charges other than: fees for recordation of security instruments, deeds, and similar documents, a bona fide and reasonable application fee and a bona fide and reasonable fee for housing counseling services. Lastly, the creditor must also comply with all other applicable requirements of this part in connection with the transaction.

By excluding these interest-free, contingent subordinate liens from determining if a non-profit creditor qualifies for the non-profit exemption (i.e. extends credit secured by a dwelling no more than 200 times), more non-profit creditors will qualify for the exemption and additional consumers with income that does not exceed the low- and moderate-income household limit, as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)), will have access to credit. For additional information about CFPB's change, interested members of the public should refer to the CFPB's proposed and final rules. See 79 FR 25730 and the CFPB's final rule published elsewhere in this Federal Register entitled "Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)".

HUD sees value in maintaining consistency with CFPB's rule when it is consistent with HUD's mission and statutes. HUD believes that the amendment to the non-profit exemption in the exempted transaction list is balanced in a way to protect against abuse while providing more access to credit for borrowers with low- and moderate-incomes, consistent with HUD's mission. Therefore, HUD is adopting the amendment and maintaining consistency with the CFPB's list of exempted transactions at 12 CFR 1026.43(a)(3), as cross-referenced in HUD's definition at 24 CFR 203.19¹. HUD's definition will thus track the new CFPB definition as of **[INSERT DATE**

¹ The list of mortgage transactions exempted under 12 CFR 1026.43(a)(2) in the Title II program at 24 CFR 203.19 is also included in the Title I program at 24 CFR 201.7, the Section 184 guaranteed loan program at 24 CFR 1005.120 and the Section 184A guaranteed loan program at 24 CFR 1007.80 by cross-reference to 24 CFR 203.19(c)(2).

OF PUBLICATION OF IN THE FEDERAL REGISTER]. This change will be effective for all case numbers assigned on or after the effective date of this document.

B. Amendment to the Points and Fees Limit Provision – Post Consummation Cure Provision

CFPB’s final rule also provides a limited, post-consummation cure mechanism for loans that are originated with the expectation of qualified mortgage status but actually exceed the points and fees limit for qualified mortgage status. The CFPB’s final rule amends the points and fees provision at 12 CFR 1026.43(e)(3) to permit a creditor or assignee to cure an inadvertent excess over the qualified mortgage points and fees limits by refunding to the consumer the amount of excess, under certain conditions.²

Given the complexity and exercise of judgment involved in determining points and fees, CFPB found that some creditors may not originate and secondary market participants may not purchase mortgage loans that are near the qualified mortgage points and fees limit. Given the establishment of this buffer, CFPB was concerned that access to credit for consumers seeking loans at the margins of the limits might be negatively affected. Therefore, the provision would permit a creditor or assignee to cure an inadvertent excess over the qualified mortgage points and fees limit and the creditor or assignee must refund to the consumer within 210 days after consummation the amount of money over the points and fees limit. This new provision is intended to ease the current burden on the market, but will expire on January 10, 2021. For additional information about CFPB’s change interested members of the public should refer to the CFPB’s proposed and final rules. See 79 FR 25730 and the CFPB’s final rule published

² Cure means a procedure to reduce points and fees or debt-to-income ratios after consummation when the qualified mortgage limits have been inadvertently exceeded. See 79 FR 25740 and the CFPB’s final rule published elsewhere in this Federal Register entitled “Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)”.

elsewhere in this Federal Register entitled “Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)”.

Despite HUD’s authority under 24 CFR 203.19 to adopt the CFPB’s changes to points and fees by notice for this subset of loans, and while recognizing the usefulness of a cure provision for these loans, HUD cannot adopt the CFPB’s cure provision for the following reasons, including but not limited to: First, the CFPB’s cure provision requires that the cured loan meet CFPB’s qualified mortgage definition in order to qualify for the cure, but HUD has codified its own definition, which differs. Second, if HUD permitted a FHA lender to return funds to a borrower or pay down the principal balance for a single family mortgage insured under Title II, the amount returned could result in a violation of the statutorily required borrower minimum cash investment of 3.5 percent or other FHA requirements relating to interested party contributions and the calculation of the maximum insured mortgage value.³ In addition, unlike the general market, the points and fees limit for Title II mortgages is a requirement for insurability of the mortgage by FHA. As an insurer of the mortgage, it is imperative that FHA ensure all eligibility requirements are met prior to insurance endorsement. Therefore, while permitting a cure in connection with FHA-insured mortgages may have the same benefit for the FHA-approved lender as a lender in the general market, the impact on FHA as the insurer is substantially different.

While FHA is not able to adopt the CFPB’s cure provision that allows the cure period to extend beyond insurance endorsement, FHA approved lenders are not without the ability to cure errors that occur in origination before submission for insurance endorsement. FHA reminds all

³ See section 203(b)(9) of the National Housing Act (12 USC 1709(b)(9)) which requires the homebuyer to pay in cash or equivalent on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property.

FHA-approved mortgagees that, consistent with FHA's existing Notice of Return/Notice of Non-Endorsement (NOR) process, mortgagees may continue to cure errors and resubmit mortgages for insurance endorsement, provided all eligibility criteria are met at the time of insurance endorsement. FHA believes that the existing ability to cure errors is sufficient and is consistent with the attachment of qualified mortgage status at endorsement. As such, HUD is not adopting the CFPB's cure provisions and does not believe any further ability to cure is warranted.

In summary, HUD's qualified mortgage definition for Title II mortgages, except for manufactured housing and exempted transactions, will continue to use the CFPB's points and fees limit at 12 CFR 1026.43(e)(3) as of January 10, 2014 and not include the change published on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Dated: October 21, 2014.

Carol J. Galante,
Assistant Secretary for
Housing- Federal Housing Commissioner.

[FR-5812-N-01]

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